
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

ADAM KARTIGANER,

Plaintiff,

v.

JUAB COUNTY, HOBY METZ, MAY
AUTOMOTIVE TOWING, and BARRY C .
CONOVER,

Defendants.

**MEMORANDUM DECISION AND
ORDER**

Case No. 2:10-CV-842

Judge Clark Waddoups

Before the court are Defendants’ motions to reconsider this court’s memorandum decision and order. (Dkt. No. 24.) Defendants argue that the court erred in its reasoning by failing to recognize that a plaintiff proceeding *in forma pauperis* must request service under Fed. R. Civ. P. 4(c)(3), pursuant to such cases as *Rochon v. Dawson*, 828 F.2d 1107 (5th Cir. 1987).¹ To the contrary, the Tenth Circuit has stated definitively that an *in forma pauperis* plaintiff need not request such service. *See Olsen v. Mapes*, 333 F.3d 1199, 1204 n.4 (10th Cir. 2003) (stating, “[t]he current version of *Rule 4* does not indicate that a request is necessary.”). Indeed, the Tenth Circuit has explicitly rejected *Rochon*. *Id.* As such, Defendants’ motions to effectively disregard the Tenth Circuit’s guidance are DENIED. (Dkt. No. 39, 42.)

¹ The Defendants also rely on instructions from the Pro Se Litigant Guide for the District Court of Utah for the proposition that a pro se litigant must request the court to order service by the U.S. Marshal. The Defendants misread the instructions. These instructions are directed to all pro se litigants – not just those proceedings *in forma pauperis*. Fed. R. Civ. P. 4(c)(3) makes it mandatory for the court to order service by the U.S. Marshal if a plaintiff is proceeding *in forma pauperis*, without any precondition that such a plaintiff make a request.

Insofar as Defendants are concerned with the court's statement that they have submitted to the jurisdiction of the court, the court clarifies that Defendants were simply deemed to have been served. Fed. R. Civ. P. 12(b)(1) and 12(b)(2) challenges will be adjudicated following their prospective rules.

DATED this 7th day of November, 2011.

BY THE COURT:



Clark Waddoups
United States District Judge